THE HON'BLE SRI JUSTICE B.N.RAO NALLA

M.A.C.M.A.No.404 of 2005

JUDGMENT:

This appeal is filed by the petitioner in O.P.No.541 of 2003 on the file of the Motor Vehicles Accidents Claims Tribunal-cum-IV Additional Chief Judge-,City Civil Court, Hyderabad whereby his petition claiming compensation was allowed in part awarding a total compensation of Rs.66,300/- with proportionate costs and interest at 9% per annum by order dated 26.08.2004.

2. The parties herein shall be referred to as they were arrayed in the O.P.

3. The brief facts of the case are that on 2.1.2003 at about 11.15 a.m. the petitioner was going on bicycle from Hasthinapuram towards Karmanghat and when he reached Bairamalguda cross roads, a lorry bearing No.AP 12 U 4089 driven in a rash and negligent manner by its driver at high speed came on wrong side of the road and dashed his cycle from behind, as a result, he sustained injuries and was immediately shifted to Osmania General hospital and was treated as in-patient from 2.1.2003 to 24.1.2003. L.B.Nagar P.S. registered a case in Crime No.8/2003 under Section 338 IPC against the driver of the lorry.

4. The first respondent-owner is set *exparte*. The second respondent-insurance company filed counter *inter alia* disputing the age, income and registration of crime by Police.

5. On the basis of pleadings of both sides, the lower Tribunal had settled the relevant issues as to the petitioner sustaining injuries in motor vehicle accident occurring on the relevant date and time and involvement of the accident lorry as well as the petitioner's entitlement to receive compensation and the respondents' liability to pay the same.

6. Petitioner-injured himself was examined as PW.2 besides examining his mother as PW.1 and also PW.3-medical witness, who examined and treated him for the injuries suffered in the accident and Exs.A.1 to A.8, were marked. However, no witnesses were examined and no documents were marked on behalf of the respondent-insurance company except marking Ex.B.1 policy with consent.

7. Taking into consideration the evidence of PWs 1 to 3 and other relevant documents exhibited including Ex.A.6-insurance company policy that was in force by the time of the accident, the lower Tribunal answered the issues in favour of the appellant-claimant against the respondents holding that the driver of the accident lorry was responsible for the accident having driven in a rash and negligent manner at high speed and having caused the accident and thereby making R.1-owner vicariously liable and ultimately making R.1-owner and R.2-insurer jointly and severally liable to pay a total compensation of Rs.66,300/-as stated supra in Para No.1.

8. It is canvassed on behalf of the appellant-claimant that he suffered fracture of superior and inferior of pubic ramie on left side and also bilateral growing laceration; that he also developed hemotoma ; that all these injuries are evident from Exs.A.5,A.7 and A.8; that the medical evidence was to the effect that he was finding difficulty in sitting and also feeling pain and tenderness over the fracture side on deep pressure; that in fact, he had suffered two fractures; that the appellant/claimant hails from a labour family and that his treatment was prolonged for six months during which period he was confined to bed and he lost his earnings for the said period, but however, the lower Tribunal failed to take note of the same and it did not award any amount of compensation in this regard. It is further contended that an amount of Rs.10,000/-was granted towards pain and suffering which

is on lower side since the appellant-petitioner suffered two fracture injuries besides other injuries and pain and suffering continued during the prolonged period of his treatment. Therefore, it is contended that in view of the fracture injuries suffered by the appellant-claimant, at a quite young age of 13 years, and having lost his earnings during the course of his treatment by six months, the compensation amount awarded by the lower Tribunal may be enhanced to a reasonable extent.

9. On the other hand, the learned counsel for respondent No.2-insurance company submits that the lower Tribunal having considered the material on record as well as the evidence adduced by the appellant-claimant has awarded a total compensation of Rs.66,300/- with proportionate costs and interest at 9% per annum which is quite reasonable and the same cannot be interfered with by this court.

10. It is evident from the impugned order of the lower Tribunal that an amount of Rs.1,000/- was awarded towards medical expenses though no bills thereof were produced; that an amount of Rs.3,000/- was awarded towards extra nourishment and transport though no grievance is made about these heads. The grievance raised on behalf of the appellant-petitioner is in respect of insufficient and unreasonable compensation awarded in respect of pain and suffering as well as injuries suffered by the appellant-claimant. The lower Tribunal awarded Rs.10,000/- towards pain and suffering and Rs.50,000/- towards injuries. The main contention of the appellant-claimant is that the lower Tribunal ought to have awarded more compensation in these two heads having regard to the nature of fracture injuries and the nature of treatment undergone for a prolonged period of six months with continued pain and suffering.

11. The evidence of PW.3- professor of Orthopaedic from Osmania General Hospital is that the petitioner was admitted on 2.1.2003 with

fracture of superior and inferior of public ramie on left side and also bilateral growing laceration. The lacerations were sutured and the fractures were treated conservatively and that he developed hemotoma. The petitioner is having difficulty in sitting and also pain tenderness over the fracture side on deep pressure. In view of the injuries suffered by the petitioner for a prolonged period, this court is of the opinion that the Tribunal ought to have awarded Rs.80,000/- towards injuries instead of Rs.50,000/-. Further, in view of the pain and suffering undergone by the petitioner for a prolonged period of six months, the Tribunal ought to have awarded Rs.20,000/-towards pain and suffering instead of Rs.10,000/-.

12. Therefore, it is to be held that the petitioner is entitled to a sum of Rs.1,06,300/- (Rupees one lakh six thousand three hundred) only (i.e. Rs.2,300/- towards attendant charges, Rs.1,000/- towards medical expenses,Rs.3,000/- towards extra nourishment and transport, Rs.20,000/-towards pain and suffering and Rs.80,000/-towards injuries) with interest at 7.5% per annum so far as the enhanced compensation amount is concerned.

13. With the above modification, the C.M.A. is disposed of. No order as to costs.

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B.N.RAO NALLA,J

18-11-2010

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